

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:13-CR-423 JCM (GWF)

Plaintiff(s),

ORDER

v.

DANIEL JAMES BARNES,

Defendant(s).

Presently before the court are the United States' motions *in limine* to admit expert testimony (doc. # 184)¹ and to bar evidence of the victim's alleged sexual behavior or sexual predisposition. (Doc. # 218).²

Also before the court are defendant Daniel James Barnes' renewed motion *in limine* to preclude bad act evidence (doc # 187)³ and motion *in limine* to have the government's case agent testify first. (Doc. # 213).⁴

I. Background

The defendant, Daniel Barnes is charged by superseding indictment with conspiracy to commit sex trafficking of a child in violation of 18 U.S.C. §1591(a),(b)(2), and (c), and 1594(c); sex trafficking of a child in violation of 18 U.S.C. §1591(a), (b)(2) and (c); transportation of a minor for prostitution in violation of 18 U.S.C. §2423(a); and conspiracy to commit sexual exploitation of a child in violation of 18 U.S.C. §2251(a) and (e). (*See* doc. # 201).

¹ Defendant filed a response. (Doc. # 195).

² Defendant filed a response. (Doc. # 249).

³ The government filed a response (doc. # 197), and defendant filed a reply. (Doc. # 205).

⁴ The government filed a response. (Doc. # 224).

1 These charges arise out of allegations that the defendant, while posing as a pimp, exploited
 2 a fifteen year old girl by convincing her to work for him as a prostitute, transporting the girl to
 3 California and then back to Nevada for the purpose of having her work as a prostitute. Defendant
 4 is also accused of taking sexually explicit photos of the girl that were posted on a notorious website
 5 for the purpose of attracting “interest” in her as a prostitute.

6 **II. Legal Standard**

7 “The court must decide any preliminary question about whether . . . evidence is
 8 admissible.” FED. R. EVID. 104. Motions *in limine* are procedural mechanisms by which the court
 9 can make evidentiary rulings in advance of trial, often to preclude the use of unfairly prejudicial
 10 evidence. *United States v. Heller*, 551 F.3d 1108, 1111-12 (9th Cir. 2009); *Brodit v. Cambra*, 350
 11 F.3d 985, 1004-05 (9th Cir. 2003).

12 “Although the Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the
 13 practice has developed pursuant to the district court’s inherent authority to manage the course of
 14 trials.” *Luce v. United States*, 469 U.S. 38, 41 n.4 (1980). Motions *in limine* may be used to exclude
 15 or admit evidence in advance of trial. *See* Fed. R. Evid. 103; *United States v. Williams*, 939 F.2d
 16 721, 723 (9th Cir. 1991) (affirming district court’s ruling *in limine* that prosecution could admit
 17 impeachment evidence under Federal Rule of Evidence 609).

18 Judges have broad discretion when ruling on motions *in limine*. *See Jenkins v. Chrysler*
 19 *Motors Corp.*, 316 F.3d 663, 664 (7th Cir. 2002); *see also Trevino v. Gates*, 99 F.3d 911, 922 (9th
 20 Cir. 1999) (“The district court has considerable latitude in performing a Rule 403 balancing test
 21 and we will uphold its decision absent clear abuse of discretion.”).

22 “[I]n *limine* rulings are not binding on the trial judge [who] may always change his mind
 23 during the course of a trial.” *Ohler v. United States*, 529 U.S. 753, 758 n.3 (2000); *accord Luce*,
 24 469 U.S. at 41 (noting that *in limine* rulings are always subject to change, especially if the evidence
 25 unfolds in an unanticipated manner).

26 **III. Discussion**

27 The court will address the motions in the order in which they were filed.

28 A. *The government’s motion to admit expert testimony*

 The government proposes to offer the expert testimony of Detective Anthony Petrulli under
 Federal Rule of Evidence (“FRE”) 702. Detective Petrulli would offer testimony about the pimp-
 prostitute relationship and subculture. The detective has been involved in at least 200 prostitution

1 cases; has interviewed numerous pimps, prostitutes, and their customers; has previous experience
2 as an expert; regularly attends training on the investigation of child prostitution; has participated
3 in undercover operations involving the sex trade; and provides training to law enforcement in the
4 areas of child and adult prostitution.

5 The defendant objects to the government's witness. He argues that the government's
6 disclosure of Detective Petrulli's testimony was inadequate under Federal Rule of Criminal
7 Procedure ("FRCP") 16. He also argues that the testimony is not relevant or necessary, that it is
8 based on inadmissible hearsay, and that it fails to meet the *Daubert* standard for admissibility. *See*
9 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

10 First, defendant argues that the government's notice states only that the testimony will be
11 based on his training and experience, which he contends is an insufficient explanation of the basis
12 for defendant's opinions under FRCP 16(a)(1)(G). *See* FRCP 16(1)(1)(G) ("[t]he summary
13 provided under this subparagraph must describe the witness's opinions, the bases and reasons for
14 those opinions, and the witness's qualifications"). The court has reviewed the government's FRCP
15 16 notice and finds defendant's argument unconvincing. (Doc. # 182).

16 The government provided a detailed summary of the government's planned use of the
17 expert, indicating that he will provide opinions on the vocabulary and slang of the pimp-prostitute
18 subculture, the relationship between a pimp and a prostitute, methods pimps employ to establish
19 power and control over prostitutes, and other relevant topics. The government also set forth his
20 qualifications, which, as a background expert witness, are also the basis for his opinions, which do
21 not appear, based on the notice, to relate directly to the defendant or conduct charged here.

22 The summary does not, however, provide notice that Detective Petrulli will offer specific
23 opinions about victim-witness "J.M.," the defendant, his codefendant Marquardt, or the
24 relationship between the three. Similarly, it does not indicate that he will offer opinions about
25 whether the defendant or any witnesses are pimps or prostitutes, and does not provide a basis for
26 offering such opinion. The government may not therefore offer such testimony.

27 Defendant's remaining arguments are also unavailing. The evidence is relevant, is not
28 unnecessarily cumulative, and is reliable. The Ninth Circuit has addressed the relevancy of expert
testimony from qualified detectives on the pimp-prostitute subculture and found that the testimony
is relevant to child sex trafficking charges and assists the jury. *See United States v. Brooks*, 610
F.3d 1186, 1195–96 (9th Cir. 2010). "By and large, the relationship between prostitutes and pimps

1 is not the subject of common knowledge.” *Id.* (quoting *United States v. Taylor*, 239 F.3d 994, 998
2 (9th Cir. 2001).

3 The expert’s qualifications in *Brooks* are indistinguishable from those of Detective Petrulli,
4 except for the fact that Petrulli has prior experience as an expert witness, which the detective in
5 *Brooks* did not. *See id.* The Ninth Circuit found that the *Brooks* testimony was both reliable and
6 relevant under the standards put forth in *Daubert* and *Kumho*. *See Kumho Tire Co., Ltd. v.*
7 *Carmichael*, 526 U.S. 137, 141 (1999); *Daubert*, 509 U.S. 579 (1993). Detective Petrulli’s
8 testimony is similarly relevant and reliable.

9 Finally, defendant argues that Detective Petrulli’s reliance on interviews with pimps and
10 prostitutes as the basis for his expertise constitutes the transmission of inadmissible hearsay in
11 violation of the Confrontation Clause under *Crawford v. Washington*, 541 U.S. 36 (2004). He
12 argues circuitously that even though none of the presumably thousands of individual statements
13 the detective has analyzed to form his expertise are offered to prove the truth of the matters he is
14 asserting, the fact that their utility is dependent on their truth makes them hearsay. The authority
15 cited by defendant is either not on point, *see, e.g., Williams v. Illinois*, 132 S. Ct. 2221 at 2268, or
16 not binding and factually distinguishable. *See United States v. Meija*, 545 F.3d 179, 197 (9th Cir.
17 2008).

18 The court will admit the government’s expert witness testimony, consistent with the
19 foregoing. Because the government did not notify the defendant that the witness would offer his
20 opinion about defendant or any witness, whether they are or were prostitutes or pimps, or their
21 relationship with respect to each other, such testimony shall be precluded. The witness may testify
22 only to the matters disclosed in the government’s notice. (*See doc. # 182*).

23 *B. Defendant’s renewed motion to preclude bad act evidence*⁵

24 Defendant moves to preclude “a plethora of images, messages, and other Facebook posts⁶
25 [(the “posts”)] that are indicative of Barnes’ alleged involvement in prostitution as well as other
26

27 ⁵ The court previously denied defendant’s motion to exclude some of the same evidence
28 on both similar and distinct grounds from those presented in its current motion. (Doc. # 148).
Because the motion here is submitted on mostly distinguishable grounds, the court will address
the arguments therein.

⁶ The evidence defendant contests also include pictures, files, and communications found
on an iPad and an iPhone seized in connection with Barnes’ arrest. This order will not distinguish
between evidence sourced from Facebook posts or from the electronic devices, but applies with
equal force to evidence derived from each.

1 uncharged bad acts.” (Doc. # 187). He argues that the images and statements are not relevant to
2 the conduct charged under FRE 402. He also asserts that any probative value the court finds in the
3 Facebook posts is outweighed by unfair prejudice under FRE 403 and, finally, that the images and
4 statements are evidence of defendant’s character offered for an impermissible use under FRE
5 404(b)(1).

6 Defendant argues first that the posts lack probative value because, with the exception of a
7 few items related to victim-witness J.M., they do not relate to the charges of child sex trafficking
8 defendant faces, but instead relate to adult sex trafficking. He also asserts that the conduct charged
9 here is specific to victim-witness J.M. and that the prostitution-related material from before and
10 after defendant’s relationship with J.M. is not relevant.

11 The court disagrees. As the government argues, defendant faces two conspiracy charges
12 for ongoing schemes involving child sex trafficking and exploitation of a minor. His behavior
13 outside the time period in which he worked with J.M. is therefore relevant to the ongoing
14 conspiracy charges. Furthermore, even if the posts are related purely to adult prostitution, which
15 is ultimately a question for the jury, a fact-finder’s conclusion that the evidence indicates defendant
16 is openly engaged in adult prostitution has a tendency to make the fact that he engages in child
17 prostitution more likely than it would be without that evidence. *See* FED. R. EVID. 402.

18 The evidence is thus admissible as intrinsic to the conspiracy crimes charged in the second
19 superseding indictment. Moreover, any evidence related to defendant’s perception of himself as a
20 pimp is evidence of motive, opportunity, intent, preparation, plan, knowledge, identity, and lack
21 of accident under FRE 404(b)(2), which allows for the use of bad act evidence for those purposes.

22 Defendant’s motion is therefore denied with respect to the posts about prostitution and any
23 evidence related to the victim-witness J.M., his codefendant Marquardt, or communications
24 between him and either. The defendant may of course object on independent grounds to any
25 specific piece of evidence at trial.

26 The defendant also argues that other posts related to drugs, guns, and money, are
27 inadmissible on similar grounds. On this, the court agrees with defendant. He has not been charged
28 with any drug or gun violence charges, nor has the government offered any evidence that defendant
actually owned any of the money he referenced or depicted in his Facebook posts. Any limited
probative value such evidence has to show motive or opportunity is outweighed by unfair prejudice
under FRE 403. Such evidence is therefore precluded.

1 Defendant's motion is granted in part and denied in part, consistent with the foregoing.

2 *C. Defendant's motion to have the government's case agent testify first*

3 Defendant requests that the court order the government to call its case agent witness first.
4 Defendant acknowledges that, even if he invokes the witness exclusion rule and the court orders
5 all witnesses excluded so that they cannot hear other witnesses' testimony, the government's
6 designated case agent may be present for the testimony of other witnesses under FRE 615(b). He
7 argues that because the agent will be present for other witness' testimony, the court should use its
8 power to maintain control over the mode and order of witness interrogation under FRE 611 to
9 compel the government to call the case agent before he can hear the testimony of other witnesses.

10 Defendant relies on the Ninth Circuit case *United States v. Valencia-Riascos*. See 696 F.3d
11 938, 943 (9th Cir. 2012). The *Valencia-Riascos* court implicitly acknowledged that the trial court
12 had the discretion to require case agent witnesses to testify first, but explicitly declined to require
13 a trial court to do so. *Id.* "In closing, we observe that it may be a good practice to require case
14 agent witnesses to testify first, but we decline to adopt a presumption that would deprive the
15 prosecution of the opportunity to present its own case without interference." *Id.*

16 The government argues that "requiring the case agent to testify first, when there has been
17 no evidence presented to the jury to summarize or alternatively, explain certain parts of the
18 investigation that led up to the indictment in this matter, would make no sense at all." (Doc. # 224
19 at 4). The court agrees and will not "deprive the prosecution of the opportunity to present its own
20 case without interference." *Valencia-Riascos*, 696 F.3d at 943.

21 Defendant's motion will therefore be denied.

22 *D. The government's motion to bar evidence of the victims' alleged sexual behavior*
23 *or sexual predisposition*

24 The United States argues that defendant should be precluded from offering any evidence
25 of the victim's consent to the charged conduct or to prove that the victim engaged in other sexual
26 behavior or to prove any purported sexual predisposition of the victim at any point during the trial.
27 Defendant indicates that he does not anticipate that he will argue a consent theory at trial.

28 Consent is not a defense to the crimes charged in the second superseding indictment. See,
e.g., *United States v. Williams*, 943 F.2d 388, 392 (4th Cir. 1991). The court will therefore grant
the motion with respect to any evidence about consent.

1 The defendant argues that the government appears to plan to offer evidence of victim-
 2 witness J.M.'s work as a prostitute both before and after the time she allegedly worked for
 3 defendant through the testimony of its own witnesses. He argues that he has a constitutional right
 4 to confront J.M. about her own statements about her prostitution work prior to and after his alleged
 5 relationship with her, as well as the statements of other witnesses about the same. *See* FRE
 6 412(b)(C).

7 He argues further that the government will attempt to prove its child sex trafficking cases
 8 based on the "recruitment" liability prong in the criminal statute. *See* 18 U.S.C. § 1591. Defendant
 9 contends that he can rebut the government's argument by showing that the "recruiting" was done
 10 by J.M.'s prior pimp.

11 Defendant of course has a right to confront the government's witnesses against him.
 12 Without the context of trial, however, the court is unable to determine whether the evidence in
 13 question should be excluded. To the extent the government elicits testimony from its own
 14 witnesses regarding any victim's past or prior work as a prostitute, defendant is entitled to cross-
 15 examine the witnesses. The government may of course object to the content of that cross-
 16 examination, but the court will not make any preliminary ruling on these issues.

17 The United States' motion will be granted in part and denied in part.

18 **IV. Conclusion**

19 Accordingly,

20 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the United States'
 21 motion *in limine* to admit expert testimony (doc. # 184) be, and the same hereby is, GRANTED,
 22 as limited by the foregoing.

23 IT IS FURTHER ORDERED that defendant Daniel James Barnes' renewed motion *in*
 24 *limine* to preclude bad act evidence (doc. # 187) be, and the same hereby is, GRANTED in part
 25 and DENIED in part, consistent with the foregoing.

26 IT IS FURTHER ORDERED that defendant Daniel James Barnes' motion *in limine* to
 27 have the government's case agent testify first (doc. # 213) be, and the same hereby is, DENIED.

28 ...

 ...

1 IT IS FURTHER ORDERED that the United States' motion *in limine* to bar evidence of
2 the victims' alleged sexual behavior or sexual predisposition (doc. # 218) be, and the same hereby
3 is, GRANTED in part and DENIED in part, consistent with the foregoing.

4 DATED April 1, 2016.

5 
6 UNITED STATES DISTRICT JUDGE